

DOCKET FILE COPY ORIGINAL

**MONTICELLO MOUNTAINTOP
BROADCASTING, INC.**

EXHIBITS

Docket 97-122

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DECLARATION OF WESLEY R. WEIS

I, Wesley R. Weis, am the sole shareholder and president of Monticello Mountaintop Broadcasting, Inc. (MMBI), permittee of WJUX (FM), Monticello, New York.

While I have been engaged in businesses in the radio industry for many years, including communications equipment sales, tower and antenna erection, sales and service, and antenna site management, and had been the part owner of FM translator stations, I had never before acquiring the permit for the Monticello FM station been the licensee, or owner of the licensee, of a radio broadcasting station.

I have known Gerard Turro for many years, perhaps a full 20 years. We met in the course of my work for radio stations while Mr. Turro was employed in the radio broadcasting industry. In time, Mr. Turro and I became partners in the ownership of an FM translator station at Pomona, New York.

Some time prior to my acquisition, through MMBI, of the Monticello FM permit, Mr. Turro described to me a ruling which he had received, through his attorneys, from Roy Stewart, the Chief of the Mass Media Bureau at the Federal Communications Commission. Mr. Turro may well have given a copy of that ruling to me. When I saw it during the course of this proceeding the contents of that ruling were familiar to me. In effect, the ruling authorized a translator station licensee to act as the time broker for an FM broadcast station which would be rebroadcast by the translator station.

In 1994, I learned, I believe from Mr. Turro, that a permit for an unbuilt FM station at Monticello was available for purchase. Mr. Turro was prepared to enter into

Federal Communications Commission

Packet No. 97-122 Exhibit No. MMBI-1

Presented by MMBI

Disposition	{	Identified	<u>✓</u>
		Received	<u>✓</u>
		Rejected	<u>✓</u>

Reporter SE

Date 11-24-97

109512-16
✓ 109512-16

an arrangement with me, if I acquired the permit for the Monticello FM station, within the terms of what was authorized in Mr. Stewart's 1991 letter as I understood that letter. This appeared on my analysis to be a good business opportunity that had been specifically approved in advance by the Chief of the Mass Media Bureau. In October 1994, I acquired that permit, through MMBI, from Larry Fishman for the price of \$120,000, as approved by the FCC. At that time, MMBI also entered into a network agreement with BCCBF, run by Mr. Turro, which I believe was consistent with Mr. Stewart's 1991 letter. On October 21, 1994, MMBI put WJUX (FM) on the air. Shortly afterward, in November 1994, Mr. Turro and I agreed to amend the network agreement, at counsel's suggestion, although we did not sign the amendment until 1995.

MMBI paid \$40,000 of the purchase price to Mr. Fishman at closing. The balance of the amount due Mr. Fishman was paid on time under the terms of a Secured Note, on which MMBI was the sole maker and sole obligated party. MMBI made all payments due Mr. Fishman under the Note. As part of the closing of MMBI's acquisition from Mr. Fishman of the permit, MMBI executed an Assignment and Assumption Agreement Concerning Lease, providing for assumption by MMBI of Mr. Fishman's tower lease with Mountain Broadcasting Corporation. In assuming that lease, MMBI agreed to indemnify, defend and hold harmless Mr. Fishman against all damages which might arise from Mr. Fishman's guaranty under the tower lease. There was no other indemnitor. MMBI then entered into a lease with Mountain Broadcasting Corporation for antenna and transmitter space at Mountain Broadcasting Corporation's tower, which I alone personally guaranteed. MMBI also entered into a lease with Mountain Broadcasting

Corporation for studio and office space in Ferndale, New York, in the building which housed the WVOS studio, and I also, alone, personally guaranteed that lease.

MMBI has made the lease payments called for in its leases with Mountain Broadcasting Corporation. MMBI has made the only payments for compensation for services in connection with WJUX (FM) made to the persons MMBI employs in the operation of WJUX (FM), currently Eugene Blabey, Carol Montana, George Spicka, and Alan Kirschner. MMBI has paid all bills for service, products and utilities used in the operation of WJUX (FM), with the single exception of bills for telephone service from October 1994 to mid-1995, when those bills were sent by NYNEX to Jukebox Radio, an entity owned by Gerard Turro, and paid by that entity. When I learned of this error on the NYNEX bills, the billing was changed and MMBI has paid all subsequent bills for WJUX (FM) telephone service, as it has and does all other WJUX (FM) bills.

In April of 1995, while I was in Las Vegas, Nevada, at an NAB convention, I learned that an FCC field inspector had visited WJUX (FM). I was told that the inspector had looked at the studio and the transmitter site. I heard nothing from the FCC to indicate that the inspector believed that he had found that WJUX (FM)'s operations or facilities did not comply with requirements for FM radio stations, until over two years later, in the Order to Show Cause in this case. I did during that period of over two years receive or learn of other correspondence from the FCC related to WJUX (FM) or to the arrangement between MMBI and Mr. Turro. I received a letter dated June 21, 1995, from Mr. Norman Goldstein of the FCC, which makes no reference to the inspection, and a letter of April 5, 1996, from Roy Stewart, the writer of the 1991 letter

which stated that an arrangement such as that between MMBI and Mr. Turro was permitted.

It was important to me that while in his letter of April 5, 1996, Mr. Stewart acknowledged that a field inspection of WJUX (FM) had been conducted and that Mr. Goldstein's letter of inquiry had been responded to by MMBI, Mr. Stewart's April 5, 1996, letter did not state in any way that the ongoing operation of WJUX (FM) had been found to be in violation of any FCC rule governing the operation, staffing or equipment of a radio broadcasting station. In fact, Mr. Stewart's letter permitted continuation of the arrangement in which Mr. Turro's company provided programming and advertising to WJUX (FM), but required that if that arrangement were to continue then Mr. Turro would have to cease from rebroadcasting the WJUX (FM) programming over the translator stations, if he continued to own those translator stations. The letter did not in any way convey to me that Mr. Stewart, having received the correspondence with Mr. Goldstein and the field inspector's report, found anything to criticize concerning the operations of WJUX (FM) under the rules pertinent to radio broadcasting stations.

I was later advised that Mr. Stewart had in August of 1996 issued a Memorandum Opinion and Order which said that the FCC would not grant an application to assign Mr. Turro's translators to a trustee, and that Mr. Turro needed to find another solution to what Mr. Stewart saw as a problem in the relationship between Mr. Turro and his company and WJUX (FM). I was not told that anything in the August 1996 Memorandum Opinion and Order signed by Mr. Stewart was at all critical of the operations of WJUX (FM) under the rules pertinent to that station, and I do not believe

that the August 1996 Order contains anything suggesting that WJUX (FM) was not operating in complete accordance with the rules of the FCC.

I was surprised when, over two years after the FCC field inspector visited WJUX (FM), the FCC issued the Order to Show Cause in this case.

The Order to Show Cause designated three issues against MMBI, the first involving the question of whether MMBI has violated the FCC's rules with respect to the maintenance of a main studio for WJUX (FM). MMBI has not violated those rules, with the possible exception, for a period of time, with regard to local telephone service, which I address later in this statement. MMBI has always had a main studio properly located under the rules of the FCC. The studio was equipped to originate programming and deliver that programming to the WJUX (FM) transmitter site for broadcast. The studio was equipped to be capable of that performance on the day it was visited by the FCC field inspector. While I am not a professional radio engineer, I am experienced in the design and operation of radio stations and I know from personal observation before the FCC inspection that, barring equipment failure on the day of the April 1995 inspection, which I do not believe occurred, WJUX (FM) was fully capable of originating programming from its main studio direct to its transmitter without the need for anyone going to its transmitter. The WJUX (FM) transmitter was also capable of being controlled from that main studio by telephone dial-up. The fact is that without any change of significance to WJUX (FM)'s equipment after the FCC inspection, a musical program was originated from that studio, when the program feed from Jukebox Radio's studio was severed, without anyone having to first visit the WJUX (FM) transmitter.

The WJUX (FM) main studio has also been adequately staffed by its general manager, Mr. Blabey, and its public affairs director, Ms. Montana, both of whom are headquartered in the Ferndale main studio building and are based there essentially full time. They have other employment with WVOS AM and FM (but not with Mr. Turro or one of his entities) which are also located in that building. Mr. Blabey and Ms. Montana have more than adequate time to perform their duties for WJUX (FM).

The second issue designated against MMBI asks whether MMBI engaged in an unauthorized transfer of control or otherwise abdicated control of WJUX (FM) to Mr. Turro or an affiliated entity. The answer is that MMBI has never engaged in an unauthorized transfer of control of WJUX (FM) to Mr. Turro or an affiliated entity nor has MMBI abdicated control of WJUX (FM) to Mr. Turro or an affiliated entity. Mr. Turro does not now have and never has had any ownership interest in WJUX (FM), nor any option to acquire any such interest whatsoever.

I have exercised financial control over station WJUX (FM) and been responsible for the obligations of MMBI and WJUX (FM), as stated above, and no one else has. Mr. Turro, and entities affiliated with Mr. Turro, have never guaranteed any debt incurred by MMBI or MMBI's performance of any contract or lease entered into by MMBI. I have exercised responsibility over the personnel of WJUX (FM), including engaging the manager, Mr. Blabey, and, at his recommendation, Ms. Montana and Mr. Spicka. Ms. Montana has the title Public Affairs Director and serves as the general WJUX (FM) staff support person. Mr. Spicka performs engineering services for WJUX (FM) on a part-time basis. I directly engaged Alan Kirschner, the WJUX (FM) Chief Operator, also a

part-time position. (The original Chief Operator of WJUX (FM), at that time an unpaid position, was Mr. Turro. Mr. Kirschner replaced Mr. Turro in mid-1995.) I have also exercised control over the programming of WJUX (FM).

I have also exercised ultimate programming authority. At the time I acquired the permit and agreed to enter into the network agreement with Mr. Turro's company, I knew that Jukebox Radio Network would provide an entertainment service of popular musical standards, including music of the big band era, which would appeal to a large segment of the Sullivan County population. Therefore, I knew that bringing that musical entertainment to Sullivan County would be in the public interest. In addition, I directed at the very commencement of WJUX (FM)'s operations that WJUX (FM) carry public service and public affairs programming aimed at serving Monticello and Sullivan County generally.

To accomplish the broadcasting of public affairs and public service programming, I arranged to have Mr. Blabey's productions of public affairs programs which were first aired on WVOS and WVOS (FM), stations owned by Mr. Blabey's Mountain Broadcasting Corporation and licensed to the Sullivan County community of Liberty, rebroadcast over WJUX (FM) on a different day and at a different time than they are broadcast over the WVOS stations. In that way, those programs have the opportunity to be heard by a different audience in Sullivan County than originally hears those programs. I also arranged for the broadcast of public service announcements of interest to Monticello and Sullivan County. Carol Montana is in charge of gathering material for public service announcements and arranging for such announcements to be broadcast

over WJUX (FM). Both the public affairs and public service announcements are currently, for reasons of economy and efficiency, fed to WJUX (FM) on the day of their WJUX (FM) broadcast from the Jukebox Radio Network studios. This has achieved economy because MMBI has not had to engage another staff person to come to the MMBI studios to replay these programs on MMBI's tape equipment and feed the programs from the studio to the WJUX (FM) transmitter. That has always been technically possible and the programs would sound the same. By not doing it that way, we have saved that staff salary. MMBI has recently built an enhanced studio for operations of WJUX (FM) (within the same building it has been occupying) and it is my plan to begin transmitting some public affairs programs for broadcast, along with other programming, directly to the WJUX (FM) transmitter from the WJUX (FM) studio.

The third issue designated against MMBI raises the question whether MMBI "and/or its agents" misrepresented and/or lacked candor to the Commission concerning the operation of WJUX (FM). I do not know who MMBI's agents are in the meaning used in this issue, nor do I believe that anything in the Order to Show Cause identifies those agents. When the Commission has been addressed on behalf of MMBI, I have addressed the Commission.

I have reviewed the representations I have made to the FCC in connection with the matters put at issue in the Order to Show Cause. In one instance it appears to me that my letter to Mr. Goldstein, dated July 27, 1995, contained a response to Mr. Goldstein's question 14, which may have created an understanding on the part of a reader which I now believe would have been erroneous. Mr. Goldstein's question said:

"State WJUX (FM)'s main studio telephone number, between the time the main studio was first established and the present, including the area code, the date this number was connected, and whether this number is local or toll-free for the residents of Monticello, New York." His question also directed me to provide copies of telephone bills for the number from the time the number was first connected to the present.

In my response, I gave the telephone number for the WJUX (FM) main studio. The number that I gave was, in fact, the number listed by the local phone company, NYNEX, for WJUX (FM) (at that time WXTM), and the statement that it was toll-free for residents of Monticello was equally correct. However, it appears that calls to that number had been forwarded uniformly to the Dumont, New Jersey, offices of Jukebox Radio Network. The telephone bills which I furnished with my response to Mr. Goldstein show not only that a large number of calls were forwarded to Dumont, New Jersey, but the bills also show a charge for monthly call forwarding service, in addition to the individual toll charges (not billed to the caller) for all of the individual calls that had been forwarded. I do not recall that I knew of the call forwarding arrangement at the time I answered Mr. Goldstein's letter. All of the phone bills had been sent by NYNEX to Mr. Turro, as I have noted above, and I do not recall how much detailed review I gave those bills before sending them to Mr. Goldstein. However, the phone bill documents I provided to Mr. Goldstein with my response to his inquiry letter did contain the information which indicate that all, or most, calls to the WJUX (FM) main studio number would have been forwarded to Jukebox Radio. I do know that I did not think my answer to Mr. Goldstein's question 14 was inaccurate when I gave the answer. On

June 20, 1997, and on June 30, 1997, MMBI filed responses to the Mass Media Bureau's Request for Admissions, specifically to requests 28 and 64, to furnish what I now believe to be more accurate information about the subject of Mr. Goldstein's question 14. Since some point in mid-1995, all calls to the phone number (which was not changed) have been answered at the WJUX (FM) main studio.

I have fully reviewed the MMBI response to Mr. Goldstein, and I do not see any other answer that was either inaccurate or was likely to have been misunderstood about a point material to any issue in this case. There are minor matters where my response might have been better phrased, but they are not important to any issue. For example, the response to question 9 says that the WJUX (FM) public inspection file is maintained at the WJUX (FM) main studio, and that a copy is also maintained at the public library in Monticello, New York. Because the FCC's rules require that the public inspection file be kept in the city of license, the file at the Monticello public library is the WJUX (FM) public inspection file, and the file at the studio is the copy.

To summarize, MMBI has maintained for WJUX (FM) a main studio located within its principal community contour, as required by the FCC's rules, and WJUX (FM) has broadcast programs to serve WJUX (FM)'s community of license and service area. The quarterly issues and programs listings for WJUX (FM) which show this program service, copies of which have been regularly maintained in the WJUX (FM) public inspection file, are being offered as an exhibit in this proceeding. Every indication I have received over the years is that WJUX (FM)'s total program service is highly valued in Sullivan County. Copies of several letters stating support for WJUX (FM) and its

programming, which I offer as being very typical of the feelings which have been expressed to me, are attached. Second, I have been in control of MMBI and WJUX (FM) since acquiring the construction permit from Mr. Fishman, and remain in control. Third, I have not knowingly misrepresented facts, or lacked candor, in my representations to the Commission concerning the operation of WJUX (FM).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 10th day of November, 1997.


Wesley R. Weis

11
178

MAURICE D. HINCHEY
26TH DISTRICT, NEW YORK

COMMITTEE ON RESOURCES

SUBCOMMITTEES:
RANKING MEMBER, FORESTS AND
FOREST HEALTH

NATIONAL PARKS AND PUBLIC LANDS

COMMITTEE ON BANKING AND
FINANCIAL SERVICES

SUBCOMMITTEES:
HOUSING AND COMMUNITY OPPORTUNITY

DOMESTIC AND INTERNATIONAL
MONETARY POLICY

JOINT ECONOMIC COMMITTEE

Congress of the United States
House of Representatives

Washington, DC 20515-3226

November 4, 1997

WASHINGTON OFFICE:
2431 RAYBURN BUILDING
WASHINGTON, DC 20515-3226
(202) 225-6335

BINGHAMTON OFFICE:
100A FEDERAL BUILDING
BINGHAMTON, NY 13901
(607) 773-2768

KINGSTON OFFICE:
291 WALL STREET
KINGSTON, NY 12401
(914) 331-4466

ITHACA OFFICE:
114 PROSPECT STREET
ITHACA, NY 14850
(607) 273-1388

MONTICELLO OFFICE:
(914) 791-7116

NEWBURGH OFFICE:
(914) 569-1640

Hon. Arthur Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 229
Washington, DC 20554

Dear Judge Steinberg:

I am writing this letter to demonstrate strong support for WJUX-FM, as it goes through the process of renewing its broadcast license. WJUX -- also known as Jukebox Radio -- is located in my district in Monticello, New York, and is the radio station of choice for many of my constituents in Sullivan County.

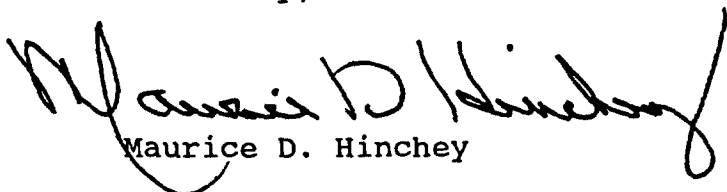
I understand that you are presiding over a hearing to determine if WJUX's operating permit should be renewed. One of the factors in your decision will be whether the station serves the public interest.

As the Representative of many of WJUX's listeners, I can attest to the station's popularity among the older people in its listening area. Because many of these individuals are retired and spend time at home, they regard the radio station as their friend. Not only does it play the music that they grew up with, but it also serves as a vital source for local news and weather information. In addition, WJUX's public service announcements and advertising are tailored for people in this group, providing listeners with an easily accessible source of information.

The loss of Jukebox Radio would be devastating to my constituents in Monticello, Sullivan County, and the surrounding areas. Renewing WJUX's license would most assuredly be in the public interest, and I urge you to take this action.

Best regards.

Sincerely,

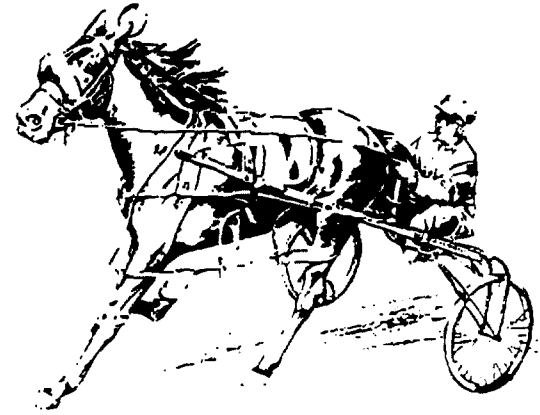

Maurice D. Hinchey

MDH:dm

12

MR
MONTICELLO
Raceway

MONTICELLO, N. Y. 12701
TEL. AREA CODE 914: 794-4100



November 5, 1997

Judge Steinberg
Federal Communications Commission
Washington, DC

Dear Judge Steinberg:

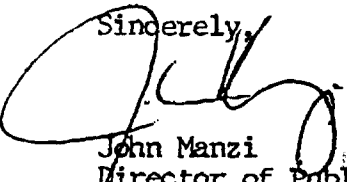
On behalf of myself and fellow residents I am writing you to inform you just how important WJUX-Juke Box Radio is to all of us who live and work in Sullivan County. As the second largest employer in Sullivan County I can assure you the residents of Sullivan County are very aware of WJUX.

For the past two years Monticello Raceway has co-sponsored a Big Band Dance with WJUX. The impact of WJUX's music in Sullivan County has inspired these Big Band Dances. Due to the advance promotion from WJUX these dances were a huge success.

WJUX not only broadcasts traditional Big Band music, but keeps our community informed with news, weather and community events calendars.

I hope you will see fit to renew the license of WJUX. It is an important part of our community.

Sincerely,


John Manzi
Director of Publicity
& Public Relations



November 5, 1997

**Judge Steinberg
FCC
Washington, D.C.**

Dear Judge Steinberg,

I am writing this letter on behalf of WJUX-FM, Monticello, New York. As the President/CEO of the Sullivan County Chamber of Commerce I am aware of the outstanding service WJUX-FM has provided to our community.

WJUX-FM has supported numerous Sullivan County Chamber events including broadcasting live from our annual air shows, and in participating in and promoting our trade shows.

WJUX has provided our county with timely weather reports, news, and community public service announcements.

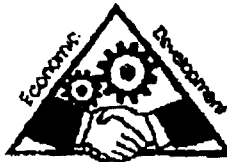
I personally know of many local residents who listen to, enjoy, and depend on the outstanding service WJUX-FM has given our community.

WJUX has filled an important niche for the older segment of our community which has been long ignored.

Yours truly,

A handwritten signature in cursive script that reads 'Jacquie Leventoff'.

**Jacquie Leventoff
President/CEO**



Sullivan County, NY

Sullivan County Partnership for Economic Development

198 Bridgeville Road, Monticello, NY 12701

Tel: 914-794-1110 Fax: 794-2324

November 6, 1997

Judge Steinberg
FCC
Washington, D.C.

Dear Judge Steinberg,

I am writing this letter to urge you to renew the license of WJUX, Monticello. When I heard that the FCC was considering not to renew the license of WJUX, I had to write to you.

Let me assure you that the service that WJUX gives the Sullivan County community is well received and is part of a necessary mix of commercial entertainment in Sullivan County. I urge you to renew the license of WJUX for the listening pleasure of all of Sullivan County.

Sincerely,

Michael J. Sullivan
President/CEO

15 X

Town of Bethel

Route 55, P.O. Box 300

White Lake, New York 12785-0300

(914) 583-4350 • Fax: (914) 583-4710

November 5, 1997

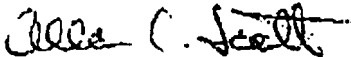
Judge Steinberg
FCC
Washington, D.C.

Dear Judge Steinberg,

I am writing you this letter to urge you to renew the license of WJUX Monticello. Recently when members of our community heard that the FCC was considering not renewing the licenses of WJUX, the community banded together and wrote hundreds of letters explaining the importance of JUKEBOX Radio in Sullivan County.

Your decision to renew the license of JUKEBOX Radio is very important to people you will never know or personally meet. Let me assure you that the service WJUX gives to our community is indeed loved and respected. Please renew the license of WJUX for all of us in Sullivan County,

Sincerely,



Allan C. Scott
Supervisor

CARL T. JONES
CORPORATION

DECLARATION OF
HERMAN E. HURST, JR.

I, Herman E. Hurst, Jr., hereby declare as follows:

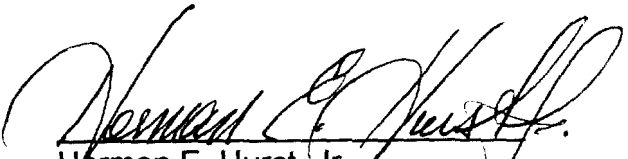
I am a Radio Engineer, an employee with the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I have been requested by Monticello Mountaintop Broadcasting, Inc. ("MMBI") to prepare this statement.

On July 25, 1995, I prepared a statement at the request of MMBI. I have now reviewed the portions of that statement (pages 3 and 4, and Figures 2 and 3) which is attached hereto. I affirm that the statements contained therein were true as of the date made. Since that date, in 1997 WJUX(FM) began to use a different broadcast studio room within the main studio building on Old Route 17 in Ferndale, New York. Thus, the room depicted in the Figure 2 photographs is not now the broadcast studio room used by WJUX(FM).

I stated on July 25, 1995, that the "WJUX(FM) main studio has programming capability, production capabilities and remote control capability to the main transmitter." I have no reason to believe that those capabilities did not exist prior to April 13, 1995, the date of an FCC inspection of WJUX(FM).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 7th day of November 1997.


Herman E. Hurst, Jr.

Federal Communications Commission
Docket No. 97-122 Exhibit No. MM8F-2

Presented by MMBI

Disposition	{	Identified <u>✓</u>
		Received <u>✓</u>
		Rejected <u> </u>

Reporter SP
11-24-97

The WJUX(FM) main studio:

(a) Description

Figure 2 contains two photographs which were taken inside the WJUX(FM) main studio on Old Route 17 in Ferndale, New York. The WJUX(FM) main studio is equipped with a Sparta 8-channel console, a reel-to-reel tape machine, cassette deck, cart machine, turntable, microphone and audio processing equipment. In addition, an EBS receiver and alert tone generator is also located at the WJUX(FM) studio. The WJUX(FM) main studio has programming capability, production capabilities and remote control capability to the main transmitter.

(b) Location

Figure 3 depicts the predicted principal community contour of WJUX(FM) considering the facilities authorized in FCC Construction Permit File No. BMPH-920214IC.¹ The WJUX(FM) principal community contour was predicted in accordance with Section 73.313 of the FCC Rules using the appropriate F(50,50) propagation curves and considering terrain data at five degree intervals. The terrain data was extracted from the U.S.G.S. 30-second digitized terrain database (TGP-0050).

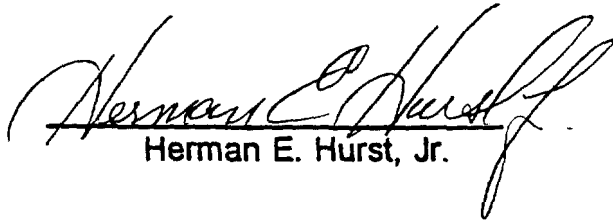
¹ An Application for License was filed on October 31, 1995, (FCC File No. BLH-941031KD) to cover the WJUX(FM) construction permit.

STATEMENT OF HERMAN E. HURST, JR.
PAGE 4

Also depicted on Figure 3 is the location of the WJUX(FM) main studio on Old Route 17 in Ferndale, New York.² As shown in Figure 3, the WJUX(FM) main studio is located within the WJUX(FM) principal community contour.

This statement and the attached figures have been prepared by me or under my direct supervision and are believed to be true and correct.

DATED: July 25, 1995


Herman E. Hurst, Jr.

² The WVOS(AM) transmitter site is also located at the WJUX(FM) main studio location